IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELATE CIVIL JURISDICTION

WRIT PETITION NO.2609 OF 1998

Major Panditrao P.A. ..Petitioner

Vs.

Union of India and Ors. ..Respondents

Mr.Saroj i/b. Mr. S.V. Pitre for Petitioner

Mr.A.P.Vanarshe, A.G.P. for Respondent No.1

Mr. G.S. Hegde with Mr. C.M. Lokesh for Respondent No.3.

CORAM: F.I. REBELLO &
S.P. KUKDAY, JJ.
DATE: 13TH APRIL, 2005.

P.C.

. The Petitioner was in the employment of Respondent No.3. He was selected for appointment in the Territorial Army, pursuant to which the Respondents gave their no objection and the Petitioner was released from the service immediately thereafter. The Petitioner joined the Territorial Army. On 7th July, 1989 the Respondent No.3 gave no objection to the Petitioner who was in the Territorial Army being joined to proceed to Field duties from 1st September, 1989 onwards or as may be decided by the Territorial Army.

. The Petitioner whilst in services of the Territorial Army was also receiving salary from

Respondent No.3. It appears that the Respondent No.3 stopped payment of the salary some time in the year 1997. On account of this failure to pay salary the Petitioner has preferred the present Petition and has sought a relief that the action of Respondent No.3 in unilaterally stopping/withholdin salary of the Petitioner since November, 1999 is illegal and bad, and for consequential reliefs. Petitioner has sought to rely on circular dated 16th August, 1977 issued by Respondent No.2 for the proposition that he is entitled to the salary for the period whilst he is in service with the Territorial Army.

2. Respondent No.3 has not filed any reply. Learned Counsel for Respondent No.3 however, submits that on a true interpretation of circular dated 16th August, 1977 it would be clear that the salary is payable only for the period of training spent in the camp. It is therefore, submitted that the Petitioner would be entitled for the salary only for that period and any amount received thereafter will have to be paid back by the Petitioner.

3. We have heard learned Counsel for the parties and considered the controversy. On a true construction of the circular dated 16th August, 1977 it would be clear that only during the period of

training spent in the camp, the Petitioner was entitled to the benefit of salary and allowances from Respondent No.3. That benefit would seize to apply once the Petitioner was no longer in training in camp. The letter dated 7th July, 1989 issued by Respondent No.3 to the Petitioner would indicate that the Respondent No.3 had no objection if the Petitioner was to proceed on field action services from 18th September, 1999. In other words the Petitioner was not in active service up to 17th September, 1989. If so construed the circular of 16th August, 1977 and the peculiar facts of the case would be construed as covering a period from 4th June, 1984 to 18th September, 1989. In other words the Petitioner would be lawfully entitled for salary only for that period.

4. In the instant case the Petitioner had sought relief to direct Respondents to pay the salary which was stopped in the year 1997. That relief admittedly cannot be granted.

5. It was contended on behalf of Respondent No.3 that they are entitled to make recovery of the amounts wrongly paid, We cannot go into the issues as in the present case. it is the Petitioner who has sought relief. If Respondent NO.3 is entitled to recover any amount from the Petitioner they can

only do it by following the due process of law.

. Considering what is aforesaid Petition stand disposed of in terms as set out in earlier part of the order.

. Rule made partly absolute accordingly. No order as to costs.

(F.I.REBELLO,J.)

(S.P. KUKDAY,J.)

‘